

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**MARK JOSEPH and
MARY JOSPEH,**

Plaintiff,

vs.

WESTERN STAR TRUCKS,

Defendant.

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8:05CV421

ORDER

This matter is before the court on the defendant's Motion to Strike Objections and to Compel Discovery (Filing No. 29). The defendant's motion is deficient for failing to comply with the United States District Court for the District of Nebraska Civil Rules. First, the defendant failed to file a brief to accompany the motion, which raises substantial issues of law. **See** NECivR 7.1(a)(1). Second, the defendant failed to attach the disputed discovery as part of an index of evidence with the motion. **See** NECivR 7.1(a)(2). Finally, the motion states the defendant's counsel made unsuccessful attempts to resolve the discovery disputes, but that progress was ongoing in the resolution attempts. Specifically, the defendant now seeks to have untimely discovery objections stricken and full responses made, which is exactly what the plaintiffs' counsel agreed to August 11, 2006. The defendant now complains the responses were not forthcoming by August 22, 2006, the agreed upon date, but no further attempts to confer were made.

NECivR 7.1(i) states:

To curtail undue delay in the administration of justice, this court will not consider any discovery motion unless counsel for the moving party, as part of the motion, shows in writing that after **personal consultation** with counsel for opposing parties and **sincere attempts** to resolve differences, they are unable to reach an accord. This showing shall also recite the **date, time and place of such conference** and the **names of all persons** participating in them.

See NECivR 7.1(i) (emphasis added); **see also** NECivR 7.1(i)(1) (defining personal consultation). Since the defendant has failed to show the parties are unable to reach an accord, the motion will be held in abeyance pending such a showing. Upon consideration,

IT IS ORDERED:

1. The defendant's motion to compel (Filing No. 29) is be held in abeyance.
2. The defendant shall have to **on or before September 7, 2006**, to file a brief, index of evidence and a written showing of compliance with NECivR 7.1(i), otherwise the motion will be deemed abandoned and denied.
3. The plaintiffs shall have ten days from the defendant's compliance with NECivR 7.1 to respond to the motion.

DATED this 28th day of August, 2006.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge